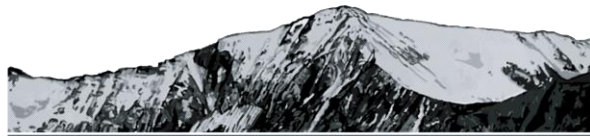


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June 14, 2021

Via email:

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Meredith Montgomery
Clerk of the Appellate Courts
303 K Street
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Re: *Bridges v. Banner et al.*
Appeal No.: S-17464/S-17473
Case No.: 4FA 17-01308 CI
Banner Claim No.: 34319
Our File No.: 2575-46

Dear Ms. Montgomery:

Pursuant to Appellate Rule 212(c)(12), Petitioner Banner Medical Group, through counsel of record, hereby cites the following supplemental authorities in support of its arguments on appeal:

1. *Beistline v. Footit*, 485 P.3d 39, 2021 Alas. LEXIS 45, *6-8, n. 24 (Alaska 2021), in support of Banner's argument that Respondent Bridges made no request for any continuance on Civil Rule 56(f) grounds before summary judgment was granted, at Banner's Reply Brief, pp. 1-10, and at oral argument on January 20, 2021.

2. As stated in *Punches v. McCarrey Glen Apts., LLC*, 480 P.3d 612, 622 (Alaska 2021):

In *Mitchell* we described the necessary steps to obtain a continuance under Rule 56(f):

[A] party (1) must unambiguously request relief on Rule 56(f) grounds, although Rule 56(f) itself need not be specifically mentioned; (2) must not

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have been dilatory during discovery; and (3) must provide adequate reasons why additional time is needed.

In support of Banner’s argument that Respondent Bridges made no request for any continuance on Civil Rule 56(f) grounds before summary judgment was granted, at Banner’s Reply Brief, pp. 1-10, and at oral argument on January 20, 2021.

3. As stated in *Hotch v. Chilkat Indian Vill. (Klukwan)*, 2020 Alas. LEXIS 132, *5-6, 2020 WL 6158088 (Alaska 2020):

And the final catch-all subsection “is reserved for extraordinary circumstances not covered by the preceding [subsections of the Rule].” We have recognized that the purpose of this subsection is to grant relief when a “judgment was obtained by the improper conduct of the party in whose favor it was rendered or the judgment resulted from the excusable default of the party against whom it was directed under circumstances going beyond the earlier clauses of the rule.” The subsection “is not for the purpose of relieving a party from free, calculated, and deliberate choices he [or she] has made.”

In support of Banner’s arguments that relief under Civil Rule 60(b)(6) is not available when it is within the scope of an earlier clause of the rule or to relieve a party from her or her counsel’s inexcusable neglect or deliberate decisions, at Banner’s Petitioner’s Brief, pp. 33-40, Reply Brief, pp. 11-19, and at oral argument on January 20, 2021.

4. As stated in *Sykes v. Lawless*, 474 P.3d 636, 646 (Alaska 2020):

A request for enlargement of time must be made before the filing deadline unless “the failure to act was the result of excusable neglect.” To prove excusable neglect, “a party must show both neglect and a valid excuse for that neglect.”¹ Sykes argues that his failure to meet the deadline was “the result of excusable neglect” because his attorney “was waiting for the court’s distribution of a judgment triggering the time to file a motion and opposition to fees” and because “Lawless had an obligation to serve [Sykes’s attorney] a copy of his motion once he received her entry of appearance, but failed to do so.”

The superior court correctly determined that Lawless was not required to serve Sykes’s newly appearing attorney because he already had completed service to Sykes under Alaska Civil Rule 5(b). And the two “excuses” Sykes provided are unconvincing. First, Sykes’s attorney claimed that Sykes did not advise her of the motions because he was traveling abroad. As the court noted, this excuse was

¹ [Citing *Erica G.*, 357 P.3d 783, 787 (Alaska 2015) (quoting *Coppe v. Bleicher*, No. S-13631, 2011 Alas. LEXIS 14, 2011 WL 832807, at *5 (Alaska Mar. 9, 2011))].

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“insufficiently supported for the court to conclude that he was not able to communicate”; further, “it is not unreasonable to require a litigant to make some arrangements for monitoring litigation mail.” The second excuse was that Sykes's attorney “did not see the motion” on the court's online system despite checking it “occasionally.” This excuse is unconvincing because the attorney's fees motion and proposed findings were listed in the online docket more than a month before Sykes's motion for an extension of time was filed. The court therefore did not abuse its discretion by denying the motion.

In support of Banner's arguments that Respondent Bridges made no request for any extension of time or continuance on Rule 56(f) grounds before summary judgment was granted and relief is not available for the inexcusable neglect and deliberate decisions of Bridges' attorneys, at Banner's Petitioner's Brief, pp. 24-40, Reply Brief, pp. 1-10 and 11-18, and at oral argument on January 20, 2021.

Sincerely yours,

/s/ John J. Tiemessen

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JJT/CCR/pat/2575-46/Rule 77 Supplemental Authority Letter 2021-06-09 0822